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**Contact**  
BIS Public  
Affairs:

Scott Kamins  
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**For Immediate Release**  
**August 16, 2002**

## **New Jersey Company Pays \$30,000 to Settle Charges of Illegal Exports to Iran**

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Assistant Secretary of Commerce for Export Enforcement Michael J. Garcia announced today that Mercator, Inc. of Englewood Cliffs, New Jersey has agreed to pay \$30,000 in civil penalties to settle allegations that the company violated U.S. export control and antiboycott laws in connection with a shipment of chemicals to Iran through the United Arab Emirates.

The Commerce Department's Bureau of Industry and Security (BIS) alleged that Mercator exported 4,080 bags of ethylene vinyl acetate valued at \$126,896 to Dubai, United Arab Emirates with knowledge that the chemicals would then be shipped to Iran without obtaining prior authorization from the Treasury Department's Office of Foreign Assets Control, as required by the Export Administration Regulations. BIS also alleged that Mercator violated the antiboycott provisions of the Export Administration Regulations by certifying that the goods being shipped did not originate in Israel, a boycotted country. Finally, BIS alleged that Mercator failed to report to BIS its receipt of a request to engage in a boycott.

"The Bureau of Industry and Security is deeply concerned by the use of strategically located commercial hubs to transship U.S.-origin goods to countries of concern such as Iran," noted Assistant Secretary Garcia. "We will vigorously prosecute cases, such as this, where evidence of such diversion is uncovered."

The Department of Commerce, through BIS, administers and enforces export controls for reasons of national security, foreign policy, nonproliferation, and short supply. The antiboycott provisions of the Export Administration Regulations prohibit U.S. persons from complying with certain aspects of unsanctioned foreign boycotts imposed or fostered by foreign governments, including furnishing information about business relations with Israel or with companies or individuals on boycott lists maintained by foreign governments. The antiboycott provisions also require U.S. persons to report their receipt of certain boycott requests to BIS's Office of Antiboycott Compliance, which investigates alleged violations, provides support in administrative or criminal litigation of cases, and prepares cases for settlement. Criminal penalties and administrative sanctions can be imposed for violations of the Export Administration Regulations.

Assistant Secretary Garcia commended the efforts of Special Agent

Charles Sheridan and Compliance Officer Ned Weant, who investigated this case.

UNITED STATES DEPARTMENT OF COMMERCE  
BUREAU OF INDUSTRY AND SECURITY  
WASHINGTON, D.C. 20230

In the Matter of:	)
	)
MERCATOR, INC.	)
560 Sylvan Avenue, 3 <sup>rd</sup> Floor	)
Englewood Cliffs, New Jersey 07632,	)
	)
<u>Respondent</u>	)

ORDER RELATING TO ALLEGATIONS UNDER 15 C.F.R. PART 760

The Bureau of Industry and Security, United States Department of Commerce (“BIS”), has notified Mercator, Inc. (“Mercator”), of its intention to initiate an administrative proceeding against it pursuant to Section 13(c) of the Export Administration Act of 1979, as amended (50 U.S.C. app. §§ 2401-2420 (1994 & Supp. V 1999)) (the “Act”),<sup>1</sup> and the Export Administration Regulations (currently codified at 15 C.F.R. Parts 730-774 (2002)) (the “Regulations”),<sup>2</sup> based on allegations in the proposed charging letter issued to Mercator that Mercator committed two violations of the Regulations. Specifically, the allegations are:

- (1) On or about January 30, 1997, Mercator allegedly failed to report receipt of a request

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<sup>1</sup> From August 21, 1994 through November 12, 2000, the Act was in lapse. During that period, the President, through Executive Order 12924, which had been extended by successive Presidential Notices, the last of which was issued on August 3, 2000 (3 C.F.R., 2000 Comp. 397 (2001)), continued the Regulations then in effect under the International Emergency Economic Powers Act (50 U.S.C. §§ 1701 - 1706 (1994 & Supp. V 1999)) (IEEPA). On November 13, 2000, the Act was reauthorized by Pub. L. No. 106-508 and it remained in effect through August 20, 2001. Since August 21, 2001, the Act has been in lapse and the President, through Executive Order 13222 of August 17, 2001 (66 Fed. Reg. 44025 (August 22, 2001)), has continued the Regulations in effect under IEEPA.

<sup>2</sup> The Regulations are currently codified in the Code of Federal Regulations at 15 C.F.R. Parts 730-774 (2002). The Regulations are also available on the Government Printing Office website at <http://w3.access.gpo.gov/bis/>.

to engage in a restrictive trade practice or boycott, in violation of Section 760.5(a) of the Regulations; and

(2) On or about February 19, 1997, Mercator allegedly furnished information concerning the past or present business relationships of other persons with or in a boycotted country, with business concerns organize&under the laws of a boycotted country, and with nationals or residents of a boycotted country, in violation of Section 760.2(d) of the Regulations;

BIS and Mercator, having entered into a Settlement Agreement pursuant to Section 766.18(a) of the Regulations whereby they agreed to ~~settle~~ this matter in accordance with the terms and conditions set forth therein, the terms of the Settlement Agreement having been approved by me; /

IT IS HEREBY ORDERED:

FIRST, that a civil penalty of \$12,000 is assessed against Mercator, which shall be paid to the U.S. Department of Commerce in six equal, monthly installments of \$2,000 each, the first payment being due on September 1, 2002, and the subsequent five payments being due on the first day of each succeeding month. Payment shall be made in the manner specified in the attached instructions.

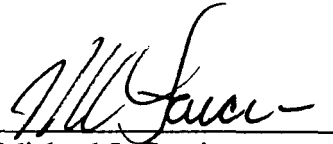
SECOND, that, pursuant to the Debt Collection Act of 1982, as amended (31 U.S.C. §§ 3701-3720E (1983 and Supp. V 1999)), the civil penalty owed under this Order accrues interest as more fully described in the attached Notice, and, if payment is not made by the due dates specified herein, Mercator will be assessed, in addition to the full amount of the civil penalty and interest, a penalty charge and an administrative charge, as more fully described in the

attached Notice.

THIRD, that the timely payment of the civil penalty set forth above is hereby made a condition to the granting, restoration, or continuing validity of any export license, license exception, permission, or privilege granted, or to be granted, to Mercator. Accordingly, if Mercator should fail to pay the civil penalty in a timely manner, the undersigned may ~~enter an~~ Order denying all of Mercator's export privileges for a period of one year from the date of entry of this Order. Prior to entry of such Order Mercator shall be provided ~~with notice~~ and opportunity to cure.

FOURTH, that the proposed charging letter, the Settlement Agreement, and this Order shall be made available to the public.

This Order, which constitutes the final agency action in this matter, is effective immediately.



Michael J. Garcia  
Assistant Secretary of Commerce  
for Export Enforcement

Entered this, 12/12, 2002, day of August

UNITED STATES DEPARTMENT OF COMMERCE  
BUREAU OF INDUSTRY AND SECURITY  
WASHINGTON. D.C. 20230

In the Matter of: )  
 )  
MERCATOR, INC. )  
560 Sylvan Avenue, 3<sup>rd</sup> Floor )  
Englewood Cliffs, New Jersey 07632, )  
 )  
Respondent

SETTLEMENT AGREEMENT BETWEEN MERCATOR, INC. AND THE  
BUREAU OF INDUSTRY AND SECURITY  
RELATING TO ALLEGATIONS UNDER 15 C.F.R. PART 760

This Settlement Agreement is made by and between Mercator, Inc. ((("Mercator")), and the Bureau of Industry and Security, United States Department of Commerce ("BIS"),<sup>1</sup> pursuant to Section 766.1 S(a) of the Export Administration Regulations (15 C.F.R. Parts 730-774 (2002)) (the "Regulations"),<sup>2</sup> issued pursuant to the Export Administration Act of 1979, as amended (50 U.S.C. app. §§ 2401-2420 (1994 & Supp. V 1999)) (the "Act").<sup>3</sup>

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<sup>1</sup> On April 18, 2002, the Department of Commerce announced that the name of the Bureau of Export Administration ("BXA") had been changed to the Bureau of Industry and Security ("BIS") and made conforming changes in the Export Administration Regulations. 67 Fed. Reg. 20630-32 (April 26, 2002). This change does not affect the substantive activities or responsibilities of BIS. All actions taken before or after April 18 under the name of BIS will be deemed to have been taken under the name BIS and all references to BIS are deemed to be to BIS. *Id.*

<sup>2</sup> The Regulations are currently codified in the Code of Federal Regulations at 15 C.F.R. Parts 730-774 (2002). The Regulations are also available on the Government Printing Office website at <http://w3.access.gpo.gov/bis/>.

<sup>3</sup> From August 21, 1994 through November 12, 2000, the Act was in lapse. During that period, the President, through Executive Order 12924, which had been extended by successive Presidential Notices, the last of which was issued on August 3, 2000 (3 C.F.R., 2000 Comp. 397 (2001)), continued the Regulations in effect under the International Emergency Economic Powers Act (50 U.S.C. §§ 1701 - 1706 (1994 & Supp. V 1999)) (IEEPA). On November 13, 2000, the Act

WHEREAS, BIS has notified Mercator of its intention to initiate administrative proceedings against Mercator pursuant to the Act and the Regulations;

WHEREAS, BIS has issued a proposed charging letter to Mercator pursuant to the Regulations, based on allegations that Mercator committed the following violations of the Regulations:

(1) On or about January 30, 1997, Mercator allegedly failed to report receipt of a request to engage in a restrictive trade practice or boycott, in violation of Section 760.5(a) of the Regulations; and

(2) On or about February 19, 1997, Mercator allegedly furnished information concerning the past or present business relationships of other persons with or in a boycotted country, with business concerns organized under the laws of a boycotted country, and with nationals or residents of a boycotted country, in violation of Section 760.2(d) of the Regulations;

WHEREAS, Mercator, has reviewed the proposed charging letter and is aware of the allegations made against it and the administrative sanctions which could be imposed against it if the allegations are found to be true;

WHEREAS, Mercator fully understands the terms of this Settlement Agreement and the Order that will be issued to give effect to this Settlement Agreement (the "Order");

WHEREAS, Mercator enters into this Agreement voluntarily and with full knowledge of its rights;

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was reauthorized and it remained in effect through August 20, 2001. Since August 21, 2001, the Act has been in lapse and the President, through Executive Order 13222 of August 17, 2001 (66 Fed. Reg. 44025 (August 22, 2001)), has continued the Regulations in effect under IEEPA.

WHEREAS, Mercator states that no promises or representations have been made to it other than the agreements and considerations herein expressed;

WHEREAS, Mercator neither admits nor denies the allegations contained in the proposed charging letter;

WHEREAS, Mercator wishes to settle and dispose of all matters alleged in the proposed charging letter by entering into this Settlement Agreement; and

WHEREAS, Mercator agrees to be bound by the Order, when entered;

NOW THEREFORE, Mercator and BIS agree as follows;

1. BIS has jurisdiction over Mercator under the Regulations in connection with the matters alleged in the -proposed charging letter.

2. BIS and Mercator agree that the following sanction shall be imposed against Mercator in complete settlement of the alleged violations set forth in the proposed charging letter:

- a. Mercator shall be assessed a civil penalty in the amount of \$12,000. Mercator shall pay this civil penalty to the U.S. Department of Commerce in six equal, monthly installments of \$2,000 each, the first payment being due on September 1, 2002, and the subsequent five payments being due on the first day of each succeeding month.
- b. The timely payment of the civil penalty agreed to in paragraph 2a. is hereby made a condition to the granting, restoration, or continuing validity of any export license, permission, or privilege granted, or to be granted, to Mercator. Failure to make timely payment of the civil penalty set forth above may result in the denial



of all of Mercator's export privileges for a period of one year from the date of imposition of the civil penalty.

3. Mercator agrees that, subject to the approval of this Settlement Agreement pursuant to paragraph 8 hereof, it hereby waives all rights to further procedural steps in this matter (except with respect to any alleged violations of this Settlement Agreement or the Order, when entered), including, without limitation, any right to: (a) administrative hearings regarding the allegations in the proposed charging letter; (b) request a refund of any civil penalty paid pursuant to this Settlement Agreement and the Order, when entered; and (c) seek judicial review or otherwise contest the validity of this Settlement Agreement or the Order, when entered.,

3. BIS agrees that, upon entry of the Order, it will not initiate any administrative proceeding against Mercator in connection with any violation of the Regulations arising Out the transactions identified in the proposed charging letter.

5. Mercator understands that BIS will make the proposed charging letter, this Settlement Agreement, and the Order, when entered, available to the public.

6. BIS and Mercator agree that this Settlement Agreement is for settlement purposes only. Therefore, if this Settlement Agreement is not accepted and the Order is not issued by the Assistant Secretary of Commerce for Export Enforcement pursuant to Section 766.18(a) of the Regulations, BIS and Mercator agree that they may not use this Settlement Agreement in any administrative or judicial proceeding and that the parties shall not be bound by the terms contained in this Settlement Agreement in any subsequent administrative or judicial proceeding.

Settlement Agreement (Part 760)  
Mercator, Inc.  
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7. No agreement, understanding, representation or interpretation not contained in this Settlement Agreement may be used to vary or otherwise affect the terms of this Settlement Agreement or the Order, when entered, nor shall this Settlement Agreement serve to bind, constrain, or otherwise limit any action by any other agency or department of the United States Government with respect to the facts and circumstances addressed herein.

8. This Settlement Agreement shall become binding on BIS only when the Assistant Secretary of Commerce for Export Enforcement approves it by entering the Order, which will have the same force and effect as a decision and order issued after a full administrative hearing on the record.

9. Each signatory affirms that he has authority to enter into this Settlement Agreement and to bind his respective party to the terms and conditions set forth herein.

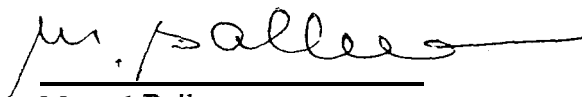
BUREAU OF INDUSTRY AND SECURITY  
U.S. DEPARTMENT OF COMMERCE

MERCATOR, MC.



Dexter M. P-rice  
Director  
Office of Antiboycott Compliance

Date: 8/7/02



Manuel Ballmer  
Chairman and CEO

Date: 7/30/02



CERTIFIED MAIL - RETURN RECEIPT REQUESTED

Mercator, Inc.  
560 Sylvan Avenue, 3<sup>rd</sup> Floor  
Englewood Cliffs, NJ 07632

Attention: Mr. Manuel Ballmer

Dear Mr. Ballmer:

We have reason to believe and charge that you, Mercator, Inc., have committed two violations of the Export Administration Regulations (the "Regulations"),<sup>1</sup> which are issued under the authority of the Export Administration Act of 1979 (the "Act"),<sup>2</sup> We charge that, in violation of Section 760.2(d) of the Regulations, on one occasion you with intent to comply with, further, or support an unsanctioned foreign boycott, furnished one item of information through your agent concerning other persons' past or present business relationships with or in a boycotted country, with business concerns organized under the laws of a boycotted country, and with nationals or residents of a boycotted country.

Also, we charge that, in violation of Section 760.5 of the Regulations, you failed to report your receipt of a request to engage in a restrictive trade practice or boycott, as required by the Regulations.

We allege that:

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<sup>1</sup> The Regulations are currently codified in the Code of Federal Regulations at 15 C.F.R. Parts 730-774 (2001). The Regulations are also available on the Government Printing Office website at: <http://w3.access.gpo.gov/bxa/>.

<sup>2</sup> 50 U.S.C. app. §§ 2401-2420 (1994 & Supp. V 1999). From August 21, 1994 through November 12, 2000, the Act was in lapse. During that period of lapse, the President, through Executive Order 12924, which had been extended by successive Presidential Notices, the last of which was August 3, 2000 (3 C.F.R., 2000 Comp. 397 (2001)), continued the Regulations then in effect under the International Emergency Economic Powers Act (50 U.S.C. §§ 1701 - 1706 (1994 & Supp. V 1999)) (IEEPA). From November 13, 2000 through August 20, 2001, the Act was in effect. From August 21, 2001 to present, the Act is in lapse. During this period of lapse, the President, through Executive Order 13222 of August 17, 2001 (66 Fed. Reg. 44025 (August 22, 2001)), has continued the Regulations in effect under IEEPA. The Act and other legal authority for the Regulations is also available on the Government Printing Office website at: <http://w3.access.gpo.gov/bxa/>.



1. You are a domestic concern resident in the State of New Jersey and as such, were a United States person as defined in Section 760.1 (b) of the Regulations.
2. In January 1997 through February 1997, you engaged in activities involving the transfer of goods and/or services, including information, between the United States and United Arab Emirates ("U.A.E.") activities in the interstate or foreign commerce of the United States as defined in Section 760.1(d) of the Regulations.
3. On or about January 30, 1997, you received a letter of credit, dated January 29, 1997, opened by Investment Bank for Trade and Finance, located in Sharjha, United Arab Emirates ("Letter of Credit"). The Letter of Credit named Chemplex, AG, located in Kloten, Switzerland as beneficiary.
4. The Letter of Credit contained the following requirement:

Signed commercial invoices in triplicate certifying . . . for merchandise described therein that the goods are not Israeli and contain no Israeli materials....
5. On or about February 19, 1997, you sent the Letter of Credit to your agent, Panalpina, Inc., a freight forwarder located in Atlanta, Georgia, to arrange for shipment of goods from the United States to Al Borkan General Trading in Dubai, United Arab Emirates.
6. In connection with the transaction described in paragraphs 3-5, above, on or about February 19, 1997, you provided Chemplex AG invoice number inv-3833, containing the following language:

. . . THE GOODS ARE NOT ISRAELI AND CONTAIN NO ISRAELI MATERIALS.
7. By providing, through your agent, Panalpina, Inc., the item of information described in paragraph 6 above, you furnished information concerning the past or present business relationships of other persons with or in a boycotted country, with business concerns organized under the laws of a boycotted country, and with nationals or residents of a boycotted country, an activity prohibited by Section 760.2(d) of the Regulations, and not excepted. We hereby charge you with one (1) violation of 760.2(d) of the Regulations.
8. In connection with the activities described in paragraphs 3 and 4 above, you received a request to engage in a restrictive trade practice of boycott. Section 760.5 of the Regulations requires United States person to report their receipt of such requests to the Department.
9. You failed to report you receipt of the request described in paragraphs 3 and 4 above. By

failing to report your receipt of a request to engage in a restrictive trade practice of boycott as required by Section 760.5 of the Regulations, you are in violation of Section 760.(5). Therefore, we charge you with one violation of Section 760.5 of the Regulations.

Accordingly, administrative proceedings are instituted against you pursuant to Part 766 of the Regulations for the purpose of obtaining an order imposing administrative sanctions.<sup>3</sup>

If you fail to answer the allegations contained in this letter within thirty (30) days after service as provided in Section 766.6, such failure will be treated as a default under Section 766.7.

You are entitled to a hearing on the record as provided in Section 766.6 of the Regulations. If you wish to have a hearing on the record, you must file a written demand for it with your answer. You are entitled to be represented by counsel and, under Section 766.18 of the Regulations, to seek a settlement agreement.

As provided in Section 766.3 of the Regulations, I am referring this matter to the Administrative Law Judge. Pursuant to an Interagency Agreement between the Bureau of Export Administration and the U.S. Coast Guard, the U.S. Coast Guard is providing administrative law judge services, to the extent that such services are required under the Regulations. Therefore, in accordance with the instructions in Section 766.5(a) of the Regulations, your answer should be filed with:

Attention: Administrative Law Judge  
U.S. Coast Guard ALJ Docketing Center  
40 South Gay Street  
Baltimore, Maryland 21202-4022

Also, in accordance with the instruction in Section 766.5(b) of the Regulations, a copy of your answer should also be served on the Bureau of Export Administration at the following address:

Office of the Chief Counsel for Export Administration  
Attention: Glenn H. Kaminsky  
Room H-3839  
U.S. Department of Commerce  
14th Street and Constitution Avenue, N.W  
Washington, D.C. 20230

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<sup>3</sup> Administrative sanctions may include any or all of the following:

- a. A civil penalty of \$11,000 per violation (see Section 764.3(a)(1) of the Regulations);
- b. Denial of export privileges (see Section 764.3(a)(2) of the Regulations); and/or
- c. Exclusion from practice (see Section 764.3(a)(3) of the Regulations).

Glenn Kaminsky is the attorney representing the BXA in this matter. He may be contacted by telephone at (202) 482-5301.

Sincerely,

Dexter M. Price  
Director  
Office of Antiboycott Compliance

// cc: Lawrence A. Joel  
Joel & Joel  
496 Kinderkamack Rd.  
Oradell, New Jersey 07649

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